

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

In the Matter of:	)	
	)	
Santa Clara County Roads	)	<b>AMENDED</b>
and Airports Department	)	<b>COMPLAINT NO. 00-036</b>
Pump Station at	)	<b>FOR</b>
Oregon Expressway Underpass	)	<b>ADMINISTRATIVE</b>
Palo Alto, Santa Clara County	)	<b>CIVIL LIABILITY</b>
_____	)	

**YOU ARE HEREBY GIVEN NOTICE THAT:**

The Santa Clara County Roads and Airports Department ("Discharger") is alleged to have violated provisions of the law, or orders of the Regional Water Quality Control Board, San Francisco Bay Region ("Board"), for which the Board may impose civil liability under Section 13385 of the California Water Code.

**ALLEGATIONS**

The Discharger is alleged to have violated NPDES permit effluent limits and Water Code Section 13376. The following facts are the basis for the alleged violations in this matter:

1. **Background:** The Department operates and maintains a pump station where the Oregon Expressway underpasses Alma Street in Palo Alto, Santa Clara County. The Oregon Expressway Underpass (OEU) pump station consists primarily of a sump equipped with four large-capacity pumps. Because the sump is below the local groundwater elevation, it collects groundwater contaminated with chlorinated solvents from upgradient sites where releases of these substances have occurred. Storm water and discharges to the storm sewer from the surrounding area are also collected in the sump. This storm sewer runoff mixes freely with the contaminated groundwater.

The sump typically collects approximately 250 gallons per minute (gpm) of groundwater and transfers it to the sanitary sewer. Of the four pumps in the sump, two transfer water to the sanitary sewer and two transfer water to the storm sewer. The Palo Alto Regional Water Quality Control Plant (RWQCP) has authorized the Discharger to discharge up to 450 gpm from the OEU pump station to the sanitary sewer. During storm events, water flow into the sump can exceed the sanitary sewer pump rates, which causes the water level in the sump to rise. The storm sewer pumps activate at a predetermined water elevation within the sump and begin transferring the combined storm sewer water and groundwater to a culvert

discharging to Matadero Creek. Activation of the storm sewer pumps prevents flooding at the OEU.

In December 1994, the Board authorized the Discharger to discharge the combined storm sewer water and groundwater from the OEU pump station under Order No. 94-087, the general NPDES permit for discharging groundwater treated to remove VOCs. As a condition of this authorization, water from the OEU pump station could only be discharged to the storm sewer during wet weather events when the sanitary sewer pumps were overwhelmed by storm water flow into the sump.

2. Violation Description: On July 9, 1998, a dry weather discharge occurred at the OEU pump station that released an unknown volume of VOC-contaminated groundwater to a storm water culvert that drains to Matadero Creek. The discharge volume is unknown because storm sewer discharges were not metered until February 1999. According to the Discharger, the July 9, 1998, discharge resulted from a failure of the sanitary sewer pumps.

Six dry weather discharges occurred at the OEU pump station from July 6, 1999, to September 16, 1999. Five of the six discharges were reportedly caused by unknown storm drain discharges to the OEU pump station that overwhelmed the sanitary sewer pumps and activated the storm sewer pumps. The dry weather discharge that occurred on August 28, 1999, was reportedly caused by an area-wide power failure that caused groundwater to accumulate in the sump, thus overwhelming the sanitary sewer pumps and activating the storm sewer pumps when power was restored.

Two dry weather discharges occurred during Spring 2000. These discharges were respectively caused by fire hydrant flushing in the vicinity of OEU, and the failure of a float switch within the OEU sump.

Seven of the nine dry weather discharges released approximately 207,000 gallons to Matadero Creek. This amount does not include volumes released by the two unmetered discharges that occurred on July 9, 1998, and September 15, 1999.

The following table summarizes the aforementioned violations and provides concentrations of constituents of concern contained in the discharges:

Discharge Date	Discharge Volume (gal.)	TCE <sup>1</sup> (ug/l)	PCE <sup>1</sup> (ug/l)	Discharge Cause
7/9/98	Unknown <sup>2</sup>	46	30	Pump failure.
7/6/99	15,012	48	33	Cause of discharge to storm drain unknown.
7/19/99	38,876	41	31	Cause of discharge to storm drain unknown.
7/24/99	15,379	41	29	Cause of discharge to storm drain unknown.
8/13/99	15,355	39	34	Cause of discharge to storm drain unknown.
8/28/99	49,378	45	35	Power outage.
9/15/99	Unknown <sup>3</sup>	47	40	Cause of discharge to storm drain unknown.
3/14/00	5,000	45	30	Fire hydrant flushing.
4/28/00	68,000	47	31	Equipment failure.

Note: Average concentrations are 44 and 33 ug/l for TCE and PCE, respectively.

(1) The NPDES permit effluent limit for TCE and PCE is 5 ug/l.

(2) Discharge occurred prior to installation of flow meter for storm drain pumps.

(3) The discharge volume is unknown because of flow meter failure.

For discharges that occurred prior to the expiration of the site's NPDES permit on July 20, 1999, the Discharger violated Prohibition B(1)(a) of Order 94-087 by discharging trichloroethene (TCE) and tetrachloroethene (PCE) at concentrations above the approved effluent limits of 5 micrograms per liter (ug/l) for each. The discharges that occurred after July 20, 1999, were in violation of Water Code Section 13376, which requires persons wishing to discharge pollutants to surface waters to obtain an NPDES permit before commencing discharge.

As previously mentioned, the Discharger's NPDES permit expired on July 20, 1999. At the times of the subsequent discharge violations, the Discharger was in the process of completing an NPDES permit application for coverage under either Order 99-051, the general NPDES permit that replaced the expired Order 94-087, or an individual NPDES permit. Issuance of a new NPDES permit was delayed by the Discharger's failure to provide a complete NPDES application. The discharges that occurred after Order 94-087 expired would have violated the replacement NPDES permit had one been issued prior to these discharges.

NPDES permit violations and Water Code Section 13376 violations are both enforceable under Water Code Section 13385.

3. Water Quality and Public Health Effects: The violations had localized, short-term effects on State waters. Matadero Creek, like many streams discharging to San Francisco Bay, recharges shallow groundwater. The concentrations of TCE and PCE cited earlier were significantly above drinking water standards for these chemicals. However, VOC concentrations would presumably be diluted before reaching shallow

groundwater, and drinking water standards are intended to protect against long-term exposure to individual chemicals. TCE and PCE concentrations were too low to cause any acute toxicity to freshwater aquatic life in Matadero Creek.

4. Culpability: On August 28, 1998, the Board sent the Discharger a notice of violation (NOV) for the July 9, 1998, dry weather discharge. After subsequent negotiations with the Discharger, the Board issued a letter on September 10, 1998, informing the Discharger that the Board would not pursue enforcement as long as the Discharger could meet the dry weather discharge prohibition within two months. During summer 1999, six dry weather discharges occurred at the site, thus demonstrating that the Discharger's efforts to eliminate dry weather discharges were ineffective. On October 7, 1999, the Board issued a second NOV for the 1999 dry weather discharges.
5. Prior history of violations: No documented violations occurred prior to those previously described. However, because of their own oversight, the Discharger did not begin monitoring discharges to the storm water sewer until May 1998. Given that NPDES permit violations began shortly after the Discharger began implementing their self-monitoring program, numerous unmonitored violations may have occurred between December 1994, when coverage under their NPDES permit first began, and May 1998.
6. Economic Savings: Treatment fees charged by the RWQCP for sanitary sewer discharges are paid by the responsible parties of the upgradient VOC releases. For this reason, the Discharger achieved no direct cost savings by discharging to the storm sewer rather than the sanitary sewer. However, the Discharger may have saved costs by postponing significant corrective actions to eliminate dry weather discharges from the OEU pump station.
7. Voluntary Cleanup Efforts: Once released, the dry weather discharges were not susceptible to cleanup or abatement as these efforts would have resulted in more disturbance and damage than the discharges themselves. For this reason, no voluntary cleanup efforts were undertaken.
8. Ability to Pay: The proposed civil liability is well within the financial capabilities of the Discharger.
9. Compliance with Migden Legislation (S.B. 709): The dry weather discharges that occurred during 2000 constitute NPDES violations enforceable under the Migden Legislation. Pursuant to this legislation, the discharger can implement a supplemental environmental project (SEP) in lieu of a penalty for the first violation in 2000. Subsequent significant violations are subject to a \$3,000 penalty for each violation.

### MAXIMUM CIVIL LIABILITY

Pursuant to Water Code Section 13385, the maximum civil liability that could be imposed by the Board in this matter is as follows:

\$10,000 per violation day plus \$10 per gallon for the discharge volume that is not susceptible to cleanup and that exceeds 1,000 gallons in violation of waste discharge requirements. The maximum civil liability that could be imposed for the seven subject violations is therefore \$2,150,000, calculated as follows:

9 violation days times \$10,000 per day =	\$90,000
206,000 gallons released times \$10 per gallon =	<u>\$2,060,000</u>
Total =	\$2,150,000

If this matter is referred to the Attorney General, a maximum liability of \$25,000 per day and \$25 per gallon may be imposed.

### PROPOSED CIVIL LIABILITY

The Executive Officer proposes administrative civil liability (ACL) in the amount of \$27,000 for the alleged violations. Of this total, \$24,000 would be suspended provided this amount is used to fund a SEP. The remaining \$3,000 of the ACL represents the portion of the fine payable pursuant to the Migden Legislation. If the Discharger chooses to complete a SEP, then payment of the \$3,000 civil liability is due August 21, 2000, to the State Cleanup and Abatement Account.

To qualify for the ACL suspension, the Discharger must submit a SEP proposal, subject to approval by the Executive Officer, by August 11, 2000. If the proposed SEP is not acceptable, the Discharger has 30 days from receipt of notice of rejection of that submittal, to either submit a new or revised proposal or make payment for the full amount of \$27,000 to the State Cleanup and Abatement Account. The accepted SEP must be completed by July 19, 2001.

Regular reports on the accepted SEP shall be provided to the Board according to a schedule to be determined. A final report shall be submitted to the Board within 60 days of project completion. Any money not used by that date must be submitted to the Board and made payable to the State Cleanup and Abatement Account or directed toward an alternative project acceptable to the Executive Officer.

- 6 -

## WAIVER OF HEARING

You may waive the right to a hearing. If you wish to waive the hearing and settle this Complaint as described herein, an authorized person must check and sign the waiver and return it to Brett Stevens of the Regional Water Quality Control Board, San Francisco Bay Region, at 1515 Clay Street, Suite 1400, Oakland, CA 94612.

You should be aware that any waiver will not be effective until July 19, 2000, to allow other interested persons to comment on this action.

If you have any questions, please contact the Executive Officer at (510) 622-2372 or Board Counsel at (510) 622-2491.

6/27/00  
Date

Lawrence P. Kolb  
Acting Executive Officer

## WAIVER

By signing below, I agree to waive my right to a hearing before the Board with regard to the violations alleged in this amended Complaint (No. 00-036), and to remit payment for the civil liability imposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this amended Complaint, and against the imposition of, or amount of, civil liability proposed. I further agree to remit payment of \$3,000 for the imposed civil liability by August 21, 2000, and to spend \$24,000 as required by this amended Complaint.

7/5/00  
Date

Alan V. Shanks  
Discharger Representative

Brian Hanger  
Title